

Huber
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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Transferred Employees--Real Estate Expenses --
Title Requirements

File: B-224593

Date: October 15, 1986

DIGEST

A transferred Government employee attempted to purchase a house in connection with her permanent change-of-station move. Because the employee had recently been discharged in bankruptcy, however, title to the property was placed solely in the name of a friend in order to satisfy the requirements of a mortgage lender. The employee may not be reimbursed real estate expenses since title to the property purchased was not in her name solely, in her name and the name of an immediate family member jointly, or solely in the name of an immediate family member, as required by the applicable statute and regulations. The fact that the employee later married the friend in whose name title was vested, and the fact that the employee made financial contributions towards the purchase, are irrelevant for purposes of determining whether the employee has met the title requirements.

DECISION

This is in response to a request for an advance decision submitted by Josephine Montoya, Authorized Certifying Officer, Department of the Interior, Bureau of Indian Affairs, as to the propriety of paying a voucher for costs incurred in the purchase of a house in connection with a permanent change of station. We conclude that the voucher may not be approved for payment.

BACKGROUND

This matter concerns an employee of the Department of the Interior who was transferred from Seattle, Washington, to Washington, D.C., and who reported to her new duty station on August 7, 1983. In connection with this permanent change-of-station transfer, the employee was authorized travel and

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transportation expenses, including the costs associated with the sale of her Seattle home and the purchase of a new home at her new duty station.^{1/} The agency reimbursed the employee for the costs of selling her old home but denied her reimbursement for the costs associated with the purchase of a new home on the grounds that she failed to meet the title requirements specified in paragraph 2-6.1c of the Federal Travel Regulations (FTR). Paragraph 2-6.1c of the FTR specifies that in order for an employee to be reimbursed for the costs incurred in connection with the sale or purchase of a home at the old or new duty station:

"[t]he title to the residence * * * at the old or new official station * * * is in the name of the employee alone, or in the joint names of the employee and one or more members of his/her immediate family, or solely in the name of one or more members of his/her immediate family."

Because the employee had been through bankruptcy proceedings shortly before she attempted to purchase a new home in Annapolis, Maryland, she was informed by a mortgage company that her name could not appear on the mortgage nor could title to the property be vested in her. Consequently, the mortgage was assumed by and the deed to the property was drawn in the name of a personal acquaintance of the employee. The employee indicates that at the time of the transaction, she and her acquaintance had been living together for some time and that, some time after the closing on the house, they were married.

Additionally, the employee indicates that on February 1, 1985, she and her acquaintance entered into a "premarital agreement." This was 7 days before closing on the house on February 8, 1985. This "premarital agreement" purports to render them "tenants in common" with respect to the residence purchased.

ISSUES

The employee raises several arguments which she feels demonstrate that the agency acted erroneously in denying her

^{1/} The authority for reimbursing an employee for the costs associated with real estate transactions in connection with a permanent change of station is 5 U.S.C. § 5724a(a)(4) and Part 6 of Chapter 2 of the Federal Travel Regulations incorp. by ref., 41 C.F.R. § 101-7.003.

reimbursement for the costs incurred in purchasing this new residence. First, she suggests that, since her name appeared on the land-sale contract for the purchase of the new home, she was liable upon the contract. She considers this evidence of her proprietary interest in the property and her liability to pay for the property. Second, she suggests that by virtue of her financial contribution to the purchase price, she has an interest in the property. Third, she suggests that the "premarital agreement" made her and her acquaintance "tenants in common" under the law of the State of Maryland and as such they are "equal owners" of the property, notwithstanding the fact that the deed to the property recites only the acquaintance's name as grantee. Finally, she contends that she and her acquaintance "lived as husband and wife since September of 1983" and that despite the lack of a formal marriage at the time of closing he was a "member of her immediate family" as that term is defined in the regulations.

ANALYSIS AND CONCLUSION

With respect to the employee's first argument, it is a fundamental rule of property law that, upon proper execution and delivery of a deed, the contract for sale merges into and does not survive the deed. Under this principle, liability under the contract is discharged. This principle is the law in the State of Maryland. Erlewine v. Happ, 39 Md. App. 106, 383 A.2d 82 (1978); Millison v. Fruchtman, 214 Md. 515, 136 A.2d 240 (1957). Hence, in the transaction in question a deed was both properly executed and delivered, and the previously executed land-sale contract did not vest title to the property in the employee, nor could she be held liable upon the contract following the conveyance of title to her acquaintance by deed.

As to the employee's second argument, although she has made a financial contribution to the purchase price of the house, this contribution did not vest her with title to the property. The record shows that the deed recites only the name of her acquaintance as grantee. Therefore, title to the property is vested solely in him. Moreover, we have previously held that, for purposes of FTR para. 2-6.1c, the fact of financial contribution is of no consequence where title to the property is not vested in the required party or parties. Patrick G. Collins, B-220829, February 28, 1986.

As to the employee's third argument, the execution of the "premarital agreement" did not act to vest title to the property in her. The original deed conveyed the property to

her acquaintance as the sole grantee, and the "premarital agreement" otherwise failed to convey legal title in the property to the employee. Under the statutory law of the State of Maryland, "* * * no estate of inheritance or freehold * * * or deed may pass or take effect unless the deed granting it is executed and recorded." MD. CODE ANN. § 3-101. We are informed by the employee that the "premarital agreement" executed between her and her acquaintance has not been recorded as is required by Maryland law. This being the case, the employee is vested with no legal title to the property by virtue of the "premarital agreement" and her acquaintance is the record holder of title. See e.g. Kingsley v. Makay, 253 Md. 24, 251 A.2d 585 (1969), Bourke v. Krick, 304 F.2d 501 (4th Cir. 1962).

Finally, as to the employee's argument that she and her acquaintance had been living as husband and wife since 1983, thus qualifying him as a member of her immediate family as defined in FTR para. 2-1.4d,^{2/} we cannot agree. Neither the State of Washington nor the State of Maryland recognizes a common-law marriage contracted and consummated within the state. In Re Gallagher's Estate, 213 P.2d 621 (Wash. 1950); Maryland Commission on Human Relations v. Greenbelt Homes, Inc., 300 Md. 75, 475 A.2d 1192, 1197 (1984). Therefore, they did not have a legally recognized husband and wife relationship until some time following the settlement upon the house. In sum, the acquaintance cannot be said to have been the spouse of the employee either at the time she reported for duty at her new duty station or at the time of settlement upon the house and he does not otherwise qualify as a member of her immediate family under FTR para. 2-1.4(d). Moreover, the fact of their subsequent marriage is of no consequence. See Patrick G. Collins, B-220289, supra.

In the final analysis, title to the property was vested exclusively in someone who was not a member of the employee's immediate family at the time she reported to her new duty station. We have consistently held that where title to real estate is not vested in the required party or parties,

^{2/} Paragraph 2-1.4d of the FTR defines immediate family member to include one's spouse, dependent children who are unmarried and under the age of 21, dependent parents and dependent brothers or sisters who are a member of the employee's household at the time he or she reports to the new duty station.

expenses associated with the sale or purchase of real estate in connection with a permanent change-of-station transfer cannot be reimbursed. See, e.g., Patrick G. Collins, B-220289, *supra*; Carl A. Gidlund, 60 Comp. Gen. 141 (1980); B-197781, September 8, 1982; Adele K. Kauth, B-197929, March 25, 1981; Reverend Richard A. Houlahan, B-192583, March 14, 1979. Accordingly, the voucher presented for decision may not be approved for payment.

for Harvey R. Jan Cline
Comptroller General
of the United States